

**BEFORE THE
FEDERAL MOTOR CARRIER SAFETY ADMINISTRATION**

In the Matter of:

CHARLES D. GOODWIN, INC.,

Respondent.

**Docket No. FMCSA-2008-0018¹
(Southern Service Center)**

ORDER APPROVING SETTLEMENT AGREEMENT

1. Background

On January 20, 2009, Respondent, Charles D. Goodwin, Inc., and Claimant, the Field Administrator for the Southern Service Center, Federal Motor Carrier Safety Administration, entered into an agreement to settle a \$35,330 claim against Respondent for six alleged violations of the Federal Motor Carrier Safety Regulations (FMCSRs). Paragraph 5 of the settlement agreement states that FMCSA will suspend the total claim if Respondent will:

Install an EOBR [electronic on-board recorder] on each CMV in the carrier's custody or control on or before February 16, 2009 and all drivers will have been trained in their usage. These EOBR devices will be maintained for the duration of this agreement and [Claimant] will have access to all data from these drivers upon request. This agreement will be in effect from February 16, 2009 until February 16, 2013.

Paragraph 6 states, in pertinent part: "If at the conclusion of the year period, Respondent has complied completely with all the provisions of the Settlement – including those outlined in paragraph 5 above, the 100% suspended portion ((\$35,330.00) of the original penalty (\$35,330) will be permanently forgiven." (Emphasis in original.) On March 4,

¹ The prior case number of this matter was NC-2007-0114-US0609.

2009, Claimant moved that the proceedings be terminated and the docket closed.² On April 16, 2010, I issued an order requesting the parties to submit an addendum clarifying the meaning of the word “maintain” in paragraph 5. I stated that if I accepted the addendum, I would issue an order terminating the proceeding and closing the docket.

The parties did not submit an addendum. Instead, on May 17, 2010, Claimant submitted the dictionary definition of “maintain”: “The ordinary meaning of the term ‘maintain’ is ‘to keep a road, machine, building, etc. in good condition.’” Claimant concluded that the term “maintain” was “susceptible to only one reasonable interpretation. The EOBRs must be **used and kept in good condition.**” (Emphasis supplied.) Claimant stated that in two on-site inspections, “Respondent continued to **use and keep the EOBRs in good condition.**” (Emphasis supplied.) Claimant further stated that an FMCSA safety investigator (SI) determined that Respondent had “installed electronic on-board GPS log system in all vehicles **and they use the auto functions to ensure the GPS locator electronically enters all data into the logging program.**” (Emphasis supplied.) On May 18, 2010, Respondent adopted Claimant’s response to the order requesting clarification. On May 20, 2010, Claimant submitted a further response stating that the United States District Court had sentenced Respondent to probation for five years and ordered that “[t]he computer monitoring equipment previously placed in the trucks **shall remain installed and operational** during the probationary period.” (Emphasis supplied.)

² The Agency’s Rules of Practice, at 49 CFR 386.22(c), provide that a settlement agreement becomes the Final Agency Order as of the date that the Assistant Administrator enters an order accepting the agreement. Therefore, Claimant should also have moved that the settlement agreement be approved.

2. Discussion

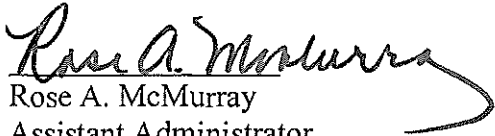
In making the request for an addendum, my concern was that there was nothing in the settlement agreement that required Respondent to use the EOBR devices; Respondent was required only to install and maintain them.³ While I agree with Claimant that “maintain” means to keep the equipment in good condition, I do not agree that it necessarily follows from that definition that the equipment must be used as well as kept in good condition. I was concerned that if Respondent installed the devices and kept them in good condition, the settlement agreement as written gave Respondent the opportunity to argue that it had complied completely with the settlement’s provisions even if it did not use the EOBR devices. As unlikely as that might be, I wanted to ensure that this possibility did not occur.⁴ Rather than provide an addendum to the agreement, however, Claimant, with Respondent’s concurrence, chose instead to inform me that the meaning of “maintain” was obvious. It is, but it does not include the act of using the devices. Nevertheless, because both parties believe that “maintain” includes “use,” I am interpreting the language in the settlement agreement to mean that Respondent must use the EOBR devices as well as keep them in good condition. With that interpretation, the settlement agreement is in the public interest.

Accordingly, *It Is Hereby Ordered That* the settlement agreement is the Final

³ According to the SI, “[t]he carrier provided a 2-minute video ... that explains how ... the drivers ... start the system.” It is evident, therefore, that installing the system does not mean that it will automatically be used. Something must be done to start the system.

⁴ The language of the United States District Court leaves me with the same concern, because “operational” means that the equipment is ready for use, but not necessarily being used.

Order in this proceeding, the proceeding is dismissed, and the docket is closed.



Rose A. McMurray
Assistant Administrator
Federal Motor Carrier Safety Administration

9.13.10
Date

CERTIFICATE OF SERVICE

This is to certify that on this 15 day of September, 2010, the undersigned mailed or delivered, as specified, the designated number of copies of the foregoing document to the persons listed below.

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A handwritten signature in cursive script, reading "Jennie Miller", is positioned above a solid horizontal line.